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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,736

Applicant(s)

STERN, RAN

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7, 9-11, 15, 17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

The method claims 1-7, 9-11, 17 and 20 are considered to be vague and indefinite in there presentation and format of the steps of the method. It is unclear from the claims as to what precisely are the steps of the method and as to what a person of ordinary skill in the art would consider the limitations of the method. For instance, it is unclear if the language found in claim 1, lines 3-5, "at least a first panel...", lines 6-8, "in which said inner sealant layer..." and lines 23-25, "such that when..." are in fact limitations of the method. Applicant's

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attention is directed to the suggested rewritten version of claim 1 found at the end of this Office action. The suggested rewritten version of claim 1 is consider allowable over the art of record as well as complying with 35 USC 112, 2nd paragraph.

Claims 3 and 4 recite the language "the front and rear side sheeting webs" but there is no antecedent basis for this language.

Claim 5, like claim 1, is vague and indefinite in there presentation and format of the steps of the method. It is unclear from the claim as to what precisely are the steps of the method and as to what a person of ordinary skill in the art would consider the limitations of the method.

Claim 15, lines 4-6, the language "in to enable a child to know..." renders the claim vague and indefinite because the scope of the claim is unascertainable. The knowledge of a "child" is an unknown variable. It is suggested that this language of claim 15, lines 4-6 be deleted.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida, deceased (US 4,762,514). The claims are directed to product-by-process, and it has long been held that the manner or method language found in the product claims is not relevant to the patentability of the final product.

5. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Farber (US 5,054,684). The claim is directed to product-by-process, and it has long been held that the manner or method language found in a product claim is not relevant to the patentability of the final product.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the

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differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild (US 5,868,658) in view of Yoshida, deceased (US 4,762,514) and Official Notice (previously established) in further view of Heller Jr. et al. (US 3,459,625). Applicant's attention is directed to the previous Office action, paragraph 6.

8. Claims 5-7, 9-15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida, deceased (US 4,762,514) in view of Huizinga (US 5,001,325). Applicant's attention is directed to the previous Office action, paragraphs 7 and 8.

9. Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wild (US 5,868,658) in view of Yoshida, deceased (US 4,762,514). Applicant's attention is directed to the previous Office action, paragraph 9.

Response to Arguments

10. Applicant's arguments with respect to claims 1-7, 9-15 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

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Allowable Subject Matter

11. The following claims 1 and 3-5 are drafted by the examiner and considered to distinguish patentably over the art of record in this application, they are presented to applicant for consideration:

1. A method of making a beverage container constructed from at least two panels of flexible laminate web material, said method comprising:

providing at least a first panel thereof having an outer structural layer, a barrier layer and an inner sealant layer, wherein the inner sealant layer has a thickness,

~~in which said inner sealant layer is provided at half its final thickness, said final thickness being approximately 80-90 microns,~~

~~said method comprising the steps of:~~

punching a hole through all of said ~~the~~ layers of said first panel, and

extrusion coating a molten supplemental sealant layer ~~supplementing said inner sealant layer with molten sealant applied by extrusion coating,~~ along the entire outer surface of said inner sealant layer, thereby occluding said punched hole

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and simultaneously providing an integrally-formed specific area of weakness for ease of puncture,

~~said molten sealant supplement completing said final thickness of said inner sealant layer, while eliminating the need for an additional closure sheeting patch,~~

wherein said inner sealant layer and said supplemental sealant layer together have a combined thickness of approximately 80-90 microns, and said inner sealant layer is provided at one-half of said combined thickness,

cooling said first panel;

joining said at least two panels together to thereby form a drinking pouch.

~~such that when said first panel is cooled, said panels can be joined to thereby form a drinking pouch.~~

3. A method of making a beverage container according to claim 1, wherein the beverage container further comprises a bottom formed from a bottom web, and including the steps of conveying a bottom sheeting web in the conveying direction between the at least two panels front and rear side sheeting webs, and welding the bottom sheeting web in part to the at least two panels front and rear side sheeting webs.

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4. A method of making a beverage container according to claim 2, wherein the beverage container further comprises a bottom formed from a bottom web, and including the steps of conveying a bottom sheeting web in the conveying direction between the at least two panels front and rear side sheeting webs, and welding the bottom sheeting web in part to the at least two panels front and rear side sheeting webs.

5. A method of producing a beverage container made out of flexible laminate web material, the method comprising:

providing said flexible laminate web material including an external structural layer, an air/moisture barrier layer and an inner sealant layer, said method comprising using a movable directed

providing a movable laser source for directing a laser beam at said flexible laminate web material for scoring and simultaneously weakening said flexible laminate web material,

making a first pass with the movable laser source for directing the laser beam to score a first line in the external structural layer of said flexible laminate web material, and making a second pass with the movable laser source for directing the laser beam to score a second, intersecting line in the external surface of the structural layer of said flexible

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laminate web material with the point of intersection of the first and second lines providing ~~enabling at least two passes over the same point, to provide~~ a puncture point on a surface of said flexible laminate web material and at the intersection of at least two beam paths across said web material simultaneously weakening the inner sealant layer of the flexible laminate web material,


such that the external structural layer is scored and the inner sealant beneath said puncture point is weakened by heat transmission causing thermal changes therein, by at least double scoring of said puncture point.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gerrity. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, may be contacted. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about

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the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen F. Gerrity
Primary Examiner
Art Unit 3721

Examiner's Telephone Number: 571-272-4460
Examiner's Work Schedule: Monday-Friday from 5:30 - 2:00
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Facsimile Telephone Number: 703-872-9306
TC 3700 General Information Telephone Number: 571-272-3700
13 December 2004